

SUPERIOR

II

STATE OF INDIANA)
COUNTY OF HOWARD)

SS:

IN THE HOWARD CIRCUIT COURT

CAUSE NO. 34 D02-0302-PL-0129

STATE OF INDIANA,

Plaintiff,

v.

MICHAEL A. BLACK,
individually and doing business as
CONSTRUCTION UNLIMITED,

Defendant.

FILED

FEB 07 2003

MONA L. MYERS
Clerk Howard Superior Court
Division II

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-1 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1 The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code 24-5-11-14.

2. At all times relevant to this complaint, Defendant, Michael Black ("Black"), was an individual engaged in business as a home improvement contractor, and currently resides at 2842 Beachwalk Lane, Kokomo, Indiana.

FACTS

3. Since at least August 31, 2001, Black has entered into home improvement contracts with Indiana consumers.
4. On or around August 31, 2001, Black entered into a contract with Kurt Woosley ("Woosley") of Lebanon, Indiana, wherein Black agreed to remove and replace the roof on Woosley's house for a price of Six Thousand Six Hundred Dollars (\$6,600.00), of which Woosley paid Three Thousand Three Hundred Dollars (\$3,300.00) to Black as a down payment. A true and accurate copy of Black's contract with Woosley is attached and incorporated by reference as Exhibit "A."
5. Black failed to provide Woosley with a written home improvement contract that contained:
 - a. the name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
 - b. a reasonably detailed description of the proposed home improvements or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications; and
 - c. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible or typed version of that person's name placed directly after or below the signature.

6. At contract signing, Black represented to Woosley that the work would be completed within a reasonable period of time.

7. Black has yet to start and; therefore, has not completed any work under the home improvement contract.

COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

8. The service described in paragraph 4 is a “home improvement” as defined by Ind. Code § 24-5-11-3.

9. The transaction referred to in paragraph 4 is “home improvement contract” as defined by Ind. Code § 24-5-11-4.

10. Black is a “supplier” as defined by Ind. Code § 24-5-11-6.

11. By failing to provide Woosley with a completed home improvement contract, containing the information referred to in paragraph 5, Black violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

12. Black’s violations of the Indiana Home Improvement Contracts Act referred to in paragraph 5 constitutes a deceptive act and subjects Black to the remedies and penalties under Ind. Code § 24-5-0.5-1, *et seq.*

COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

13. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 12 above.

14. The transaction referred to in paragraph 4 is a “consumer transaction” as defined by Ind. Code § 24-5-0.5-2(a)(1).

15. Black is a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3).

16. The violations of the Indiana Home Improvement Contracts Act referred to in paragraph 5 above constitute deceptive acts in accordance with Ind. Code §24-5-11-14.

17. Black's representation to Woosley that roof work would be performed, as referred to in paragraph 4 above, when Black knew or reasonably should have known that no such benefit or work would be performed, is a violation of Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(1).

18. Black's representation to Woosley that he could provide home improvement services to the Woosley home within a reasonable period of time, when he knew or reasonably should have known that he could not provide the home improvement services within that time period, as referred to in paragraphs 6 and 7 above, is a violation of Ind. Code §24-5-0.5-3(a)(10).

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS OF THE
DECEPTIVE CONSUMER SALES ACT**

19. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 18 above.

20. The misrepresentations and deceptive acts set forth in paragraphs 5, 6, and 7 above were committed by Black with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendant, Michael Black, enjoining Black from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:

- (1) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- (2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- (4) A reasonably detailed description of the proposed home improvements;
- (5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

- (6) The approximate starting and completion date of the home improvements;
- (7) A statement of any contingencies that would materially change the approximate completion date;
- (8) The home improvement contract price; and
- (9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;
- b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;
- c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;
- d. representing, expressly or by implication, that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have, which the Defendant knows or should reasonably know it does not have; and

- e. representing, expressly or by implication, that Defendant is able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when Defendant knows or should reasonably know he cannot;

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court

enter judgment against the Defendant for the following relief:

- a. cancellation of the Defendant's contract with Kurt Woosley pursuant to Ind. Code §24-5-0.5-4(d);

- b. consumer restitution in the amount of Three Thousand Three Hundred and no/100 Dollars (\$3,300.00), for money unlawfully received from Kurt Woosley, pursuant to Ind. Code §24-5-0.5-4(c)(2);

costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

- d. On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;


On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

g. All other just and proper relief.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana
Atty. No. 4150-64

By:


Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

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William G. G. G. G.

Construction Unlimited
Michael A. Black

PROPOSAL

PROPOSAL NO.
SHEET NO.
DATE 8-22-01

PROPOSAL SUBMITTED TO:

WORK TO BE PERFORMED AT:

NAME Mr. + Mrs. Woosley	ADDRESS
ADDRESS	CITY, STATE
CITY, STATE	DATE OF PLANS Same
PHONE NO.	ARCHITECT

We hereby propose to furnish the materials and perform the labor necessary for the completion of

- Roof Estimate -

- Complete tear off -
- Replace shingles + felt on mansard section of Roof
- Replace Box vents
- Put Rubber on upper flat sections of Roof
- Wrap 6 upstairs windows in owners choice of color
- Felt and Shingle shed
- Remove trash

10 year no leak warranty

(Monday 4:00)

30 year laminated shingles
#30 felt (EIK)

4-51-01
CK# 13707
Half down 1/2 up

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of:

Dollar (\$ **2,600.00**)

with payments to be as follows

Respectfully submitted

Per

half down / half upon Completion Note - This proposal may be withdrawn by us if not accepted within _____ days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

SIGNATURE

SIGNATURE

DATE

Aug 31, 01

Adams 9450

EXHIBIT

A